

ORIGINAL

LAW OFFICES  
**KOTEEN & NAFTALIN, L.L.P.**  
1150 CONNECTICUT AVENUE  
WASHINGTON, D.C. 20036

BERNARD KOTEEN\*  
ALAN Y. NAFTALIN  
ARTHUR B. GOODKIND  
GEORGE Y. WHEELER  
MARGOT SMILEY HUMPHREY  
PETER M. CONNOLLY  
CHARLES R. NAFTALIN  
GREGORY C. STAPLE  
R. EDWARD PRICE  
• SENIOR COUNSEL

DOCKET FILE COPY ORIGINAL

TELEPHONE  
(202) 467-5700  
TELECOPY  
(202) 467-5915

October 30, 1997

RECEIVED

OCT 30 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, DC 20554

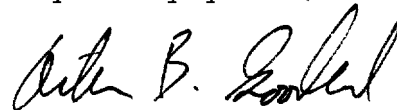
Re: MM Number Docket No. 97-182

Dear Mr. Caton:

Transmitted herewith, on behalf of The New York Times Broadcasting Service, Inc., are an original and nine copies of its "Comments" submitted in MM Docket Number 97-182: In the Matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting Placement and Construction of Broadcast Station Transmission Facilities.

In the event there are any questions concerning this matter, please contact the undersigned.

Very truly yours,



Arthur B. Goodkind

Enclosure

No. of Copies rec'd  
1st ABCDE

CH9

Before the  
Federal Communications Commission  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RECEIVED

OCT 30 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Preemption of State and )  
Local Zoning and Land Use ) MM Docket No. 97-182  
Restrictions on the Siting, )  
Placement and Construction of )  
Broadcast Station Transmission )  
Facilities )

COMMENTS OF THE NEW YORK TIMES BROADCASTING SERVICE, INC.

The New York Times Broadcasting Service, Inc. ("NYT") files herewith, by its attorneys, its comments in response to the Notice of Proposed Rule Making issued August 19, 1997 in the above-captioned matter.

This proceeding stems from a request filed by the National Association of Broadcasters (NAB) and the Association of Maximum Service Telecasters (MSTV) that the FCC act to preempt certain local zoning regulations that may otherwise prevent or delay the introduction of DTV television broadcasting in many localities. On the basis of local regulatory obstacles NYT may encounter with respect to its Huntsville, Alabama, television station, NYT strongly supports the actions recommended by NAB and MSTV. We believe that information concerning local regulations in the

Huntsville market affecting television transmitting tower modifications will be of help to the Commission in this proceeding and the purpose of these comments is to place those facts in this record. We believe that the Huntsville situation is but one of many throughout the country in which local regulations may prevent or substantially delay the start of DTV television service.

NYT is the licensee of television station WHNT-TV in Huntsville. WHNT-TV provides service to the hilly Huntsville/Decatur/Florence television market from a 944 foot guyed tower located on Monte Sano Boulevard in Huntsville. NYT owns the property on which the tower and transmitter building are located, the properties on which the tower guy wire anchor points are located, as well as easements on property traversed by the guy wires. The present tower site is the best possible location for WHNT-TV's transmitter in terms of the criteria for transmitter location set forth in Section 73.685 of the Commission's Rules.

WHNT-TV has operated from its present site and with substantially its present facilities since 1969. At the time the present transmitting facility was built, it complied with all local ordinances and regulations. Since then, however, new

ordinances and regulations have been enacted that would require that a special zoning exception be obtained for any new tower construction. As a non-conforming use, WHNT-TV's present facilities are "grandfathered," but the applicable ordinance does not permit structural changes to the existing tower.

As set forth in more detail in the attached Declaration of Steve King, Chief Engineer for WHNT-TV, NYT seeks to implement DTV broadcasting in advance of the May 1, 2002 deadline required by the FCC's timetable. NYT plans to do so by adding a DTV antenna to the present WHNT-TV tower, just below the station's NTSC antenna. Based on tower studies NYT has conducted, NYT has determined that the addition of a second antenna will require some strengthening of its present tower and guy wire system, including the replacement of some structural elements and the addition of others.

The addition of a new DTV antenna will not increase the overall height of WHNT-TV's tower and the structural changes needed to strengthen the tower will not materially change its appearance. Non-ionizing radiation in the vicinity of the transmitter site would continue to comply with Commission guidelines. Nonetheless, as set forth in the attached Declaration of Gary C. Huckaby, WHNT-TV's Huntsville counsel, it

appears that the structural changes needed to strengthen the tower will require that the station obtain a variance from the Huntsville Board of Adjustment. The applicable local ordinance that appears to require such a variance is attached to Mr. Huckaby's Declaration.

Although Mr. Huckaby believes that the case for granting a variance is a compelling one, he states that there can be no assurance that the variance will be granted. Opposition to such an action is possible and the time within which the Board would act cannot be predicted with certainty. No matter what action the Board takes, any tower proponent or opponent aggrieved by the Board's decision may appeal to the Madison County, Alabama Circuit Court for de novo review, and that court's decision could similarly be appealed to the Supreme Court of Alabama. As set forth in Mr. Huckaby's statement, the total time for completion of the Board of Adjustment process and any subsequent appeals could be well in excess of four years. Such a schedule would not allow implementation of DTV broadcasting by the Commission's May 1, 2002 deadline, much less the earlier commencement of DTV broadcasting that WHNT-TV hopes to accomplish.

If the required variance cannot be obtained, NYT has thus far found no other practicable alternative for implementing DTV broadcasting by WHNT-TV. WHNT-TV's Chief Engineer estimates that strengthening WHNT-TV's present tower and adding a DTV antenna will cost less than \$600,000. Even assuming that an alternative site could be found at which local zoning approvals for a tall tower could be obtained<sup>1</sup> -- a very doubtful assumption -- the cost of relocating at an alternative site would be at least four times as high, not including land acquisition costs. The station could not undertake even to pursue any such alternative until it had exhausted every available legal option with respect to adding a DTV antenna to its existing tower.

Given these circumstances, preemptive actions such as those recommended by NAB and MSTV are essential if there is to be any assurance that DTV broadcasting will be implemented in markets such as Huntsville under the Commission's timetable and in a manner that will permit stations to replicate existing NTSC

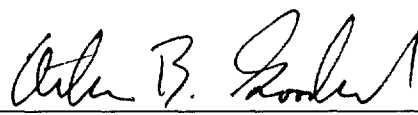
---

<sup>1</sup> As set forth in Mr. Huckaby's Declaration, the process for obtaining approval for a new tower would be substantially the same as that for obtaining a variance.

service areas. NYT therefore supports the NAB/MSTV proposals and urges their adoption.

Respectfully submitted,

THE NEW YORK TIMES BROADCASTING  
SERVICE, INC.

By:   
Arthur B. Goodkind  
Koteen & Naftalin, L.L.P.  
1150 Connecticut Avenue, N.W.  
Suite 1000  
Washington, D.C. 20036  
(202) 467-5700

October 30, 1997

ATTACHMENTS TO COMMENTS OF  
THE NEW YORK TIMES BROADCASTING SERVICES, INC.  
MM DOCKET NO. 97-182

- Declaration of Steve King
- Declaration of Gary C. Huckaby



### DECLARATION OF STEVE KING

I am the Chief Engineer of television station WHNT-TV, Huntsville, Alabama. I have held this position since 1994 and have worked for WHNT-TV in an engineering capacity since 1978.

WHNT-TV's present transmission system is located at 960 Monte Sano Boulevard in Huntsville. Our NTSC facility operates with a maximum effective radiated power of 1279 kw and an antenna height of 1751 feet above average terrain. The center of radiation for our antenna is 914 feet above ground and the overall height of our tower, including obstruction lighting, is 944 feet above ground.

Station WHNT-TV has operated with substantially its present facilities at its present transmitter site since 1969. Our company owns the land on which the station's transmitting tower, transmitter building and tower guy wire anchor points are located, as well as easements for the land traversed by the guy wires.

Our present transmitter site is the best possible site for our station in terms of the requirements set forth in Section 73.685 of the Commission's Rules for transmitter site selection. From this location, WHNT-TV is able to provide a good line of

sight signal to most viewers in the hilly Huntsville/Decatur/  
Florence Alabama television market.

Under the mandatory timetable established by the FCC,  
stations in markets that are the size of Huntsville are required  
to commence DTV operations by May 1, 2002. Our company, however,  
is seeking to implement DTV broadcasting for all of its stations  
at an earlier date. My own target date for commencement of DTV  
operations on WHNT-TV is during 2001.

Our present plan for implementing DTV is to use our present  
tower for both NTSC and DTV broadcasting during the transition  
period. This would require us to remove one section of our tower  
at the top and to install new NTSC and DTV antennas in place of  
the single NTSC antenna now at the top of the tower. Our new DTV  
antenna would be positioned just below the new NTSC antenna. We  
would not increase the height of our present tower, but we would  
need to strengthen the tower to accommodate the additional weight  
of the second antenna and transmission line and we would need to  
replace some of the guy wires connected to our present guy wire  
anchor points. The net effect of these changes would not  
substantially change the overall appearance of the tower, and the  
non-ionizing radiation in the vicinity of our transmitter site  
would continue to comply with Commission guidelines.

Under local ordinances, I am advised by our Huntsville counsel that the steps we will need to take to strengthen our tower will require us to apply to the Huntsville Board of Adjustment for a zoning ordinance. We have also been advised by our Huntsville counsel that there can be no assurance that such a variance will be granted by the Board and that, whichever way the Board decides, its decision would be subject to possible appeals that could take more than four years to be decided.

We have no other present viable alternative for expeditious implementation of our DTV operation. We anticipate that strengthening our present tower and adding a DTV antenna will cost less than \$600,000. Construction of a second tower at a different location would, I believe, cost us at least four times that amount (not including what I anticipate would be very substantial property acquisition cost), even assuming that we could find a site at which we could obtain zoning approval. We could not consider undertaking such an expense until such time as we had pursued every available legal option available to us with respect to adding a DTV antenna to our existing tower. I am therefore very concerned that our local zoning ordinance and procedures may thwart our plans to implement DTV in 2001 or even by the FCC's required start date of May 1, 2002.

I declare under penalty of perjury that the foregoing is true and correct.

Steve King  
Steve King

October, 28, 1997  
(Date)

### **DECLARATION OF GARY C. HUCKABY**

1. My name is Gary C. Huckaby, and I am an attorney in Huntsville, Madison County, Alabama. I am a partner in the law firm of Bradley, Arant, Rose & White, which has offices in Huntsville and Birmingham, Alabama. I was admitted to the Alabama State Bar in 1962, and I have practiced law in Huntsville, Alabama, for over thirty years. I am licensed to practice law in the State of Alabama.
2. I have represented The New York Times Broadcasting Service, Inc. for many years, including representation in zoning matters in Huntsville, Alabama. The New York Times Broadcasting Service, Inc. owns and operates a television broadcasting station in Huntsville, Alabama, known as WHNT-TV, Channel 19 (herein "WHNT-TV").
3. I am familiar with applicable ordinances and procedures of the City of Huntsville, Alabama, relating to zoning and land use. The applicable ordinances are described as follows:
  - A. Articles 90 through 95 of the zoning ordinance, relating to the administration and enforcement of the zoning for the City of Huntsville, adopted on March 21, 1963, a copy of which is attached to this Declaration as Exhibit A.
  - B. An amendment to the zoning ordinance of the City of Huntsville, Alabama, pertaining to towers, which was adopted on January 23, 1997, a copy of which is attached to this Declaration as Exhibit B.

- C. A copy of a statute of the State of Alabama (Sections 11-52-80 and 11-52-81, Code of Alabama 1975), authorizing the creation of Boards of Adjustment, such as appears in Article 92 of Exhibit A, said statute being attached hereto as Exhibit C.
4. In addition to my familiarity with the above statute and ordinances, I have in my law practice handled requests for other clients for special exceptions and variances and matters involving the application of the zoning laws in the City of Huntsville.
5. It is my understanding that WHNT-TV seeks to add DTV capacity to its present tower, which is located at 960 Monte Santo Boulevard in Huntsville. It is my information that the transmitter site of WHNT-TV has been in continuous use by the station since 1969. To the best of my knowledge, WHNT-TV was in compliance with the requirements of the applicable zoning laws when the tower was constructed.
6. Section 73.20.1(5) of Exhibit B sets out the following grandfather clause for existing towers:
- All telecommunications towers existing on the effective date of this ordinance that have been lawfully erected shall be allowed to continue as non-conforming uses, provided they continue to meet or exceed current federal standards and regulations, as amended, and the provisions of Section 73.20.8 - Structural Design of Towers hereof. Such towers shall be permitted to accommodate additional antennas and any necessary new construction if such antennas and new construction do not increase the tower height beyond that allowed by the FCC or the FAA or by Sections 92.5.3(9)(e) or 73.20.7 - Tower Height or beyond the existing height if already in excess of the allowable height. Any new construction that would increase tower height or alter the structural strength or configuration of the tower will require the tower to be brought into compliance with the provisions of this ordinance except for Section 73.20.3 - Setbacks.

7. According to Steve King, the Chief Engineer of WHNT-TV, WHNT-TV seeks to comply with the FCC requirement that all television stations commence DTV operations by placing a new antenna on WHNT-TV's existing tower. It is my understanding from Mr. King that the new antenna would require strengthening the existing tower to accommodate the additional weight, although the height of the tower would remain the same. However, according to Section 73.20.1(5), as quoted above, since the structural strength of the tower would be altered, WHNT-TV would have to bring the tower into compliance with the new ordinances, except for the setback requirements, or seek a variance.
8. The amendments to the ordinance shown at Exhibit B thus present several problems for WHNT-TV. In order to meet FCC requirements for DTV operations, it must obtain a variance under the ordinances or it must find a new site and obtain a special exception for such site. Both could involve extensive delays and such delays would make it difficult, if not impossible, for that station to meet the FCC's May 1, 2002 deadline for DTV operation or an earlier 2001 date, which, I am advised, the station hopes voluntarily to meet. In fact, it is likely impracticable to relocate the tower to another site, considering the unavailability of suitable sites, the cost, and procedural difficulties involved.
9. Under Section 92.5.3(21), a special exception must be granted by the Board of Adjustment before a building permit for a new tower can be granted. *See* Huntsville Ordinance § 92.5.3(21). That section lists the other sections of the ordinance that must be complied with regarding such things as security, structural design, signs, access, landscaping, co-location, and building permits. Therefore, WHNT-TV would have to comply with all of

those requirements before being allowed to begin construction or renovation of a new tower to support the mandatory DTV signal. The specific requirements are stated in the attached ordinance.

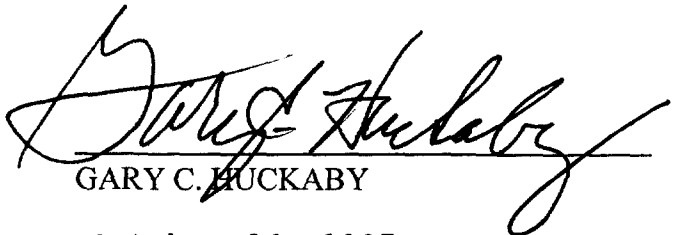
10. The procedure for determining if a special exception would be granted under the zoning ordinance to permit erecting a new tower may be very lengthy. First, the applicant must submit all written materials necessary for the Board to evaluate the application to the Inspection Department by the first Wednesday of the month. The Board of Adjustment meets the third Tuesday of the month. Then, the applicant must give notice “at least seven (7) days in advance of public hearing by at least one advertisement in a newspaper of general circulation.” Huntsville Ordinance § 92.5.2(2). The Inspection Department requires that all property owners within 500 feet of the proposed tower site must also be notified of the hearing. Then, after the hearing takes place, the Board of Adjustment determines whether the special exception should be granted. The time that this will take is difficult to predict. Postponements are common, depending on the level of public interest.
11. Finally, if the Board of Adjustment decides that the proposed tower falls within the special exceptions, the Building Inspector must wait fifteen days before issuing a permit because anyone aggrieved by the decision may appeal to the Madison County Circuit Court for *de novo* review within those fifteen days as provided by Section 92.7 of the Huntsville Ordinance and Alabama Code § 11-52-81. Similarly, if the Board denied the application, the same appellate procedure would be available to WHNT-TV.



12. If the decision of the Board is appealed either by a tower proponent or opponent, the time it may take to acquire a final decision is difficult to predict as it depends on the Court's docket. Such time could range from nine months to over two years. After a decision by the Circuit Court, an appeal could be taken to the Supreme Court of Alabama. Again, it is difficult to predict the length of time that such an appeal would be pending before a final decision of the Court, but it could range from ten months to two years, possibly longer.
13. It is my judgment, based on my knowledge of the legal impediment, available sites, and other local considerations, that it is impracticable to consider a new site in order to comply with the FCC deadline for DTV operations.
14. The only feasible alternative would be to apply to the Board for a variance for the existing tower, as set out in Section 92.5.4 of the zoning ordinances (Exhibit A). In reviewing a request for a variance, the Board must examine many factors to determine if the variance "will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship, and so that the spirit of this ordinance shall be observed and substantial justice done." Huntsville Ordinance § 92.5.4.
15. The procedure for obtaining a variance is much like the procedure for obtaining a special exception. Again, all the information must be supplied to the Board and notice must be given to the public and those within 500 feet of the proposed site. While I believe that the case for granting a variance is compelling, there can be no assurance that the Board would

grant the request. Furthermore, it is uncertain how long it may take the Board to decide whether to grant the variance or not. Additionally, the appeal process and time would be the same as described in paragraphs 11 and 12 above.

16. Furthermore, there is a substantial risk that a variance for strengthening the tower, even if ultimately approved, would not be granted in time to comply with the FCC deadline for DTV. A lengthy litigation may be involved.
17. In my judgment, unless a variance for strengthening WHNT-TV's existing tower is granted within a reasonable time or unless there is a pre-emption of the applicable local ordinances by the FCC, it will be highly unlikely that WHNT-TV from a practicable and economical point of view could put DTV transmissions in operation.
18. This declaration is made under penalty of perjury.



GARY C. HUCKABY

October 26, 1997

## ARTICLE 90      AMENDMENTS

### 90.1 - Procedure

The regulations and the number, area, and boundaries of districts and all or any portion of this ordinance may be amended, supplemented, changed, modified, or repealed by the City Council of the City of Huntsville, after a public hearing has been held on the proposed ordinance amending the Zoning Ordinance; provided that such amending ordinance shall be published in a newspaper of general circulation within Huntsville at least once a week for two consecutive weeks in advance of its passage and further provided that both publications thereof shall be at least fifteen (15) days in advance of its passage. (63-93, 93-772)

### 90.2 - Official Zoning Map Changes

Any amendment to the Zoning Ordinance requiring a change in the district boundaries shall be shown on the zoning maps one day after the publication of such amendment. The number and effective date of the amending ordinance shall be printed on the map. The amending ordinance bearing the signature of the Mayor of the City of Huntsville shall be on file in the office of the City Clerk-Treasurer. The official zoning maps shall be on file in the Planning office. (63-93, 93-772)

\*63-93, \*93-772

## ARTICLE 91      ADMINISTRATION AND ENFORCEMENT

### 91.1 - Enforcement Officer

The provisions of this ordinance shall be administered and enforced by the Building Inspector. This official shall have the right to enter upon any premises at any reasonable time for the purpose of making inspection of buildings or premises necessary to carry out his duties in the enforcement of this ordinance.

If the Building Inspector shall find that any of the provisions of this ordinance are being violated, he shall take any action authorized by this ordinance to insure compliance with or to prevent violation of its provisions, including issuance by him or any inspector under his supervision of a citation to appear in Recorders Court in accordance with ordinances of the city authorizing same, or he may make affidavit under oath before a duly authorized magistrate seeking a warrant for the arrest of the violator.  
(63-93, 75-377)

### 91.2 - Building Permits Required

It shall be unlawful to commence the excavation for or the construction of any building or other structure, including accessory structures, or to store building materials or erect temporary field offices, or to commence the moving, alteration, or repair (except repairs consisting only of painting or wallpapering) of any structure, including accessory structures, until the Building Inspector has issued for such work a building permit including a statement that the plans, specifications, and intended use of such structure in all respects conform with the provisions of this ordinance. Application for a building permit shall be made to the Building Inspector on forms provided for that purpose. (63-93)

### 91.3 - Approval of Plans and Issuance of Building Permit

It shall be unlawful for the Building Inspector to approve any plans or issue a building permit for any excavation or construction until he has inspected such plans in detail and found them in conformity with this ordinance. To this end, the Building Inspector shall require that every application for a building permit for excavation, construction, use of land, moving, or alteration be accompanied by a plan or plat drawn to scale and showing the following in sufficient detail to enable the Building Inspector to ascertain whether or not the proposed excavation, construction, use of land, moving or alteration is in conformance with this ordinance:

conviction shall be punished by a fine of up to five hundred dollars (\$500) plus costs of court for each offense. Each day any violation of this ordinance continues shall constitute a separate offense. (63-93, 91-18)

\*63-93, 66-88, 75-377, 91-18

## ARTICLE 92

## BOARD OF ADJUSTMENT

### 92.1 - Creation and Membership

A Board of Adjustment is hereby established which shall consist of five members, each to be appointed for a term of three years by the Mayor and approved by the City Council. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. Members of the Board may be removed for cause by the City Council upon written charges and after a public hearing, provided however that the duly appointed members of said Board, as established and appointed pursuant to prior enacted zoning ordinances, shall continue to serve as members of said Board under the terms of this ordinance. (63-93)

### 92.2 - Proceedings

The Board shall adopt rules necessary to conduct of its affairs and in keeping with the provisions of this ordinance. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public.

The Board shall keep minutes of its proceedings, showing the vote, indicating such fact, and shall keep records of its examinations and of other official actions; all of which shall be immediately filed in the offices of the Inspection Department and shall be a public record. (63-93)

### 92.3 - Hearings; Appeals; Notice

Appeals to the Board may be taken by any person aggrieved or by any officer, department, or board of the City affected by any decision of the Building Inspector. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the Building Inspector and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Building Inspector shall transmit forthwith to the Board all papers constituting the record upon which the action appealed was taken.

A reasonable application fee, to be established by the adopted by-laws of the Board of Adjustment, must accompany the application for appeal.

The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same

- (2) Notice shall be given at least seven (7) days in advance of public hearing by at least one advertisement in a newspaper of general circulation. The owner of the property for which special exception is sought or his attorney shall be notified by mail;
- (3) The public hearing shall have been held. Any party may appear in person, or by agent, or by attorney.
- (4) The Board of Adjustment shall make a finding that it is empowered under the section of this ordinance described in the application to grant the special exception, and that the granting of the special exception will not adversely affect the public interest. (63-93)

**92.5.3****Permitted Uses as Special Exceptions**

The Board of Adjustment may permit, as a special exception, the following uses in the specified district:

- (1) Semi-public, non-profit, recreational facilities in any residence district (except miniature golf courses).
- (2) Private club in a Residence 2-B District.
- (3) Private off-street parking area in Residence 2-B District provided such area is adjacent to a business or industrial district.
- (4) Quarries, sand pits and gravel pits in Heavy Industry and Planned Industrial districts provided that the following conditions are met in addition to any other conditions imposed by the Board of Adjustment, to wit:
  - (a) Setbacks. No area of extraction or storage of earth products or overburden material, except for the construction of site barriers as required by paragraph (b) below and shown on the approved site plan, and

- (i) Safety Measures. Appropriate safety measures shall be taken to control access to the subject property including, but not necessarily limited to, notices posted at intervals no greater than one hundred feet (100') along the extraction site boundaries and along any public rights-of-way that shall warn against trespassing and shall contain a statement of the use of explosives, if applicable. The perimeter of all active extractive operations shall be enclosed by a fence not less than four feet (4') in height.
  - (ii) Hydrologic Standards. Excavation activities shall be planned such that they minimize changes to the prevailing hydrologic conditions in both the extraction site and off-site areas. Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized so that the future use of the area is not adversely affected.
- (e) Reclamation Standards. The reclamation of an extraction site shall be required and shall result in conditions appropriate for the expected future use of the site.
- (i) Full reclamation of the site as provided herein must commence immediately upon completion or termination of the extraction operation or following a dormant period of twelve (12) consecutive months as required by Section 73.18.8.
  - (ii) In all cases the final grades shall be appropriate for the expected future use.
  - (iii) All final site drainage shall be designed, sloped, revegetated, or treated by other measures so that erosion and siltation shall be held to a minimum.



- (h) Performance Bond. The applicant shall post a bond or deposit a cash escrow with the City of Huntsville in accordance with the provisions of Section 73.18 before approval by the Board of Zoning Adjustment shall become effective and before an extraction permit shall be issued.
  - (i) Termination of Special Exception. The special exception and any variances granted within the extraction site subsequent to the approval of the special exception shall terminate at such time as the Director of Natural Resources and Environmental Management notifies the Building Inspector that a valid extraction permit for the site is not in effect and that the reclamation plan has been completed.
- (5) Private airport in any industrial district.
  - (6) Cemetery in any district.
  - (7) Trailer court in a Residence 2-B District.
  - (8) Go-cart tracks and operation, model airplane flying, or other recreational facility creating loud noise in any industrial district.
  - (9) Radio (except amateur radio), television, in any residential district..
  - (10) Fallout shelters for more than two families in any residence district.
  - (11) Laundry or drycleaning operation in a neighborhood business district, provided no flammable fluids are used, no open discharge of steam, and not more than five (5) people are employed.
  - (12) Private schools, nurseries, kindergartens and child care centers in any residential district when operated as an accessory use to any permitted use other than a family dwelling, provided that the Department of Transportation concurs and that all